

**IN THE SUPREME COURT OF ARIZONA**

KAREN FANN, in her official capacity  
as President of the Arizona Senate;  
WARREN PETERSEN, in his official  
capacity as Chairman of the Senate  
Judiciary Committee; and the  
ARIZONA SENATE, a house of the  
Arizona Legislature,

Petitioners,

vs.

THE HONORABLE MICHAEL KEMP,  
Judge of the SUPERIOR COURT OF  
THE STATE OF ARIZONA, in and for  
the County of MARICOPA,

Respondent Judge,

AMERICAN OVERSIGHT,

Real Party in Interest.

Case No. CV-22-0018-PR

Arizona Court of Appeals  
Division One  
No. 1 CA-SA 2021-0216

Maricopa County Superior Court  
Nos. CV2021-008265 and  
LC2021-000180-001  
(Consolidated)

**PHOENIX NEWSPAPERS, INC.'S AND KATHY TULUMELLO'S  
NOTICE OF CONSOLIDATION OF CASES AND REQUEST TO  
BE CONSIDERED REAL PARTIES IN INTEREST**

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*Attorneys for [Proposed] Real Parties in Interest Phoenix Newspapers, Inc.  
and Kathy Tulumello*

Phoenix Newspapers, Inc. and Kathy Tulumello (together, “PNI”) respectfully submit this Notice to apprise the Court of pertinent, recent developments in this case, and to request an opportunity to participate as real parties in interest.

By way of brief background, Petitioners Karen Fann, Warren Petersen, and the Arizona Senate (together, the “Senate”) now seek review of a special action decision of the Court of Appeals issued on January 21, 2022, regarding the doctrine of legislative privilege (the “Special Action Decision”). The Special Action Decision partially affirmed and partially overruled a decision issued by the Hon. Judge Michael Kemp (the “Superior Court Order”) in Case No. CV 2021-008265, a case brought by American Oversight seeking access to certain public records (the “AO Case”), and directed Judge Kemp to conduct further proceedings in accordance with the Special Action Decision.

On January 19, 2022, two days before the Court of Appeals issued the Special Action Decision, Judge Kemp issued an order (the “Consolidation Order”) consolidating the AO Case with a special action brought last year by PNI against the Senate and Cyber Ninjas, Inc. (the

“PNI Case”), which seeks access to many of the same public records sought in the AO Case. A true and correct copy of the Consolidation Order is attached hereto as **Exhibit A**. Among other things, the Consolidation Order provides that “the Court of Appeals’ ruling [*i.e.*, the Special Action Decision] will be the law of the case on the issue of legislative privilege.” Ex. A at 2.

Due to the consolidation of the AO Case and the PNI Case, both PNI and American Oversight will be directly affected by this Court’s decisions regarding the Petition. For example, PNI has already been directly affected by the Court’s January 26, 2022 Order temporarily staying the Superior Court Order, and will continue to be directly affected if this stay is further continued, because the Senate is entitled to withhold certain documents (from both American Oversight **and** PNI) on the basis of legislative privilege while the temporary stay remains in effect. Similarly, if this Court were to accept review of the Special Action Decision, PNI would be bound by this Court’s rulings on legislative privilege in this same consolidated action. To the extent this Court’s rulings affect the Senate’s duty to produce or withhold certain public records, PNI’s rights will be directly and materially affected.

For the forgoing reasons, Phoenix Newspapers, Inc. and Kathy Tulumello hereby request to be classified as Real Parties in Interest with respect to the Petition and to be granted the right to participate in these proceedings as such. Specifically, PNI requests an opportunity to be heard – by the submission of responsive papers and participation in oral arguments or hearings – on the Senate’s (i) Petition for Review, and (ii) Emergency Motion for Stay. Of course, PNI will comply with the briefing schedule imposed by this Court’s January 26, 2022 Order.

RESPECTFULLY SUBMITTED this 27th day of January, 2022.

By: /s/ David J. Bodney

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